JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark New Jersey 07101

By: Doreen A. Hafner
Deputy Attorney General
[redacted]

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF RICHARD A. KAUL, M.D. LICENSE NO. 25 MA 063281 TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF NEW JERSEY	Administrative Action VERIFIED COMPLAINT

JEFFREY S. CHIESA, Attorney General of the State of New Jersey, by Doreen A. Hafner, Deputy Attorney General, with offices located at 124 Halsey Street, Newark, New Jersey, by way of Verified Complaint says:

GENERAL ALLEGATIONS

1. Complainant, Attorney General of New Jersey, is charged with the responsibility of enforcing the laws of the State of New Jersey pursuant to N.J.S.A. 52:17A-4(h), and is empowered to initiate administrative disciplinary proceedings against persons licensed by the New Jersey State Board of Medical Examiners pursuant to N.J.S.A. 45:1-14 et seq.

2. The New Jersey State Board of Medical Examiners ("Board") is charged with the duty and responsibility of regulating the practice of medicine and surgery in the State of New Jersey pursuant to N.J.S.A. 45:9-1 et seq.

3. Respondent Richard A. Kaul, M.D. ("Respondent"), is an individual who, at all times relevant hereto, has been a physician licensed to practice medicine and surgery in the State of New Jersey with License Number 25 MA 063281. (Licensee Verification Letter, annexed hereto as Exhibit A).

4. Respondent Kaul is the owner of New Jersey Spine and Rehabilitation Center ("NJSR") located at 111 Wanaque Avenue, Pompton Lakes, New Jersey, 07442. (Enforcement Bureau Inspection Report dated January 17, 2012 with attachments, annexed hereto as Exhibit B).

5. Respondent Kaul also practices medicine at the following New Jersey locations: Bergen Passaic Ambulatory Surgical Center located at 1084 Main Avenue, Clifton; 1117 Main Ave (Suite 201), Clifton; 690 Stelton Road, Piscataway; 20 Watsessing Avenue, Bloomfield;, 71 Livingston Avenue, New Brunswick; 119 Cliford Street, Suite 105, Newark; 230 West Jersey Street, Elizabeth; and 35 Journal Square, Suite 924, Jersey City. He also practices at 64-33 98th Street, Rego Park, New York. (Preliminary Evaluation Committee Transcript dated February 3, 2010, annexed hereto as Exhibit C; 8:1-10:10; Website for NJSR, annexed hereto as Exhibit

I, Website-0020).

6. On May 14, 2003, the Board issued a Final Order finding that Respondent Kaul engaged in multiple misrepresentations in response to questions posed in various credentialing applications in violation of N.J.S.A. 45:1-21(b) and engaged in gross malpractice with respect to patient I.B. in violation of N.J.S.A. 45:1-21(c). Respondent Kaul's medical license was suspended for a period of two years with the first six months served as a period of active suspension with the remainder stayed and served as a period of probation.

7. Initials are being used in this Verified Complaint to protect the confidentiality of the patients referenced herein. The patients' true identities have been made known to Respondent and to the Board.

COUNT I

8. Complainant repeats the General Allegations set forth above as if fully set forth herein and incorporated by reference.

9. The standard of care for physicians performing spinal surgical procedures including, but not limited to, minimally invasive spinal fusions with instrumentation, open spinal surgery, and discectomies, is that the physician must have the accepted standard of surgical training, education, and experience. (Curriculum Vitae and Expert Report of Greg Przybylski, M.D., annexed hereto as Exhibit D; Curriculum Vitae and Expert Report of

Andrew Kaufman, annexed hereto as Exhibit E).

10. Respondent Kaul does not have the accepted standard of surgical training, education, and experience to perform spinal surgical procedures. (Curriculum Vitae with attached certifications dated through February 3, 2010, annexed hereto as Exhibit F; Updated Curriculum Vitae with attached certifications dated through March 28, 2012, annexed hereto as Exhibit M; Exhibit D; Exhibit E).

11. In 1988, Respondent Kaul graduated from the Royal Free Hospital School of Medicine, London University. (Exhibit F, 0077).

12. In 1995, Respondent Kaul completed an anesthesiology residency at Albert Einstein-Montefiore Medical Center in the Bronx. (Exhibit C, 26:15-19; 32:21-33:4; Exhibit F, 0086).

13. During his anesthesiology residency Respondent Kaul did not receive training to perform spinal surgery. (Exhibit C, 33:6-20; Exhibit D).

14. Respondent Kaul is a Board-certified anesthesiologist. (Exhibit C, 34:7-9; Exhibit F, 0087).

15. Respondent Kaul does not have any other certifications recognized by the American Board of Medical Specialties ("ABMS"). (Exhibit F; Exhibit M; Exhibit D).

a. Dr. Kaul states that he is board certified by the American Board of Interventional Pain Management. This Board is not recognized by the ABMS. Dr. Kaul obtained his certification in 2004 and it was only granted for two years. (Exhibit F, 0091; American Board of Interventional Pain Management website, annexed hereto as Exhibit G).

b. Dr. Kaul states that he is a member of the American Academy of Minimally Invasive Spinal Medicine and Surgery. This Academy is not recognized by the ABMS. (Exhibit F, 0092; Website of the Academy of Minimally Invasive Spinal Medicine and Surgery, annexed hereto as Exhibit H).

c. Dr. Kaul states that he is a member of the Spine Arthroplasty Society. This Society is not recognized by the AMBS. (Exhibit M, 1049)

16. Respondent Kaul has taken numerous courses, many accredited for Continuing Medical Education credits, in spinal surgical procedures. Several of these courses included hands-on training with cadavers. (Exhibit F; Exhibit M).

17. The courses taken by Respondent Kaul do not provide sufficient training and experience in the evaluation and surgical treatment of spinal disorders to allow an anesthesiologist to perform spinal surgical procedures. (Exhibit D; Exhibit E).

18. The courses taken by Respondent Kaul certify successful completion of the course but do not certify the competence of the participant in performing any of the skills or materials taught in the course. (Exhibit D).

19. Respondent Kaul completed a two-week fellowship in Seoul, Korea in minimally-invasive spinal surgery. (Exhibit F, 0094).

20. This two-week fellowship falls far short of the generally accepted standard of medical practice for training in the performance of spinal surgery in the United States. The generally accepted standard of medical practice for spinal surgery is to complete either an orthopedic surgery or neurosurgery residency

followed by a year-long post-residency fellowship in spinal surgery. (Exhibit D; Exhibit E).

21. Respondent Kaul is ineligible for hospital privileges in spinal surgical procedures based upon his training, education and experience. (Exhibit D, Exhibit E).

22. Respondent Kaul grossly and repeatedly deviates from the accepted standard of care and good medical practice by performing spinal surgical procedures including, but not limited to, minimally invasive spinal fusions with instrumentation, open spinal surgery, and discectomies. (Exhibit D, Exhibit E). This is demonstrated by, but not limited to his treatment of patients K.S, G.H, S.S, F.K. and P.M., set forth below:

Date of Surgery	Patient	Spinal Procedure Performed	Anesthesia	Duration
12/19/11	K.S. 39 y.o. male	Open anterior cervical discectomy, neuroforaminal decompresssion, and interbody fusion with fusion cages at two spinal levels, C4-C5 and C5-C6. Iliac crest bone harvest and reconstruction of the ilium using Vitoss. Insertion of anterior plates to which the fusion cages were attached. (Patient Record of K.S. at Exhibit B, EB0175-0181, EB0184-EB0187).	General	3 hr 46min

12/9/11	G.H. 56 y.o. Male	Lumbar decompression and interbody fusion with fusion cages at three spinal levels, L3-L4, L4-L5, and L5-S1. A lateral extraperitoneal exposure was used to access the L3-L4 level. Iliac crest bone harvest and reconstruction of the ilium using Vitoss. Insertion of pedicle screws and rods bilaterally at the L3, L4, L5, and S1 pedicles. (Patient Record of G.H. at Exhibit B, EB0063-0072, EB0075-EB0080).	General	6 hr 29min
12/9/11	S.S. 56 y.o. Male	Removal of facet screws at the L5 pedicles. Lumbar decompression and open interbody spinal fusion at the L5-S1 level. Iliac crest bone harvest and reconstruction of the ilium using Vitoss. Insertion of pedicle screws and rods bilaterally at the L5 and S1 pedicles. (Patient Record of S.S. at Exhibit B, EB0242-0248, 0251-0254).	General	2 hr 49min
11/21/08	P.M.	Lumbar interbody fusion with mesh cage and allograft bone at L2-L3, L3-L4, and L4-L5 with bilateral transfacet pedicular screws at L3, L4 and L5 with fluoroscopy using a bilateral posterolateral approach. There was no evidence that rods were inserted. (Patient Record for Patient P.M, annexed hereto as Exhibit J, M-0373, M-0421-M-0425).	General	4hr 20min

7/28/08	F.K.	Removal of previous spinal hardware from the L3, L4, and L5 levels. Lumbar interbody spinal fusion with mesh cages and allograft bone at three spinal levels, L2-L3, L3-L4, L4-L5, and the insertion of pedicle screws on the right at L2, L3, L4 and on the left at L3, L4, and L5 with the insertion of rods. (Patient Record for Patient F.K., annexed hereto as Exhibit K, 0419-0422, 0603).	General	7 hr

23. Respondent Kaul currently performs spinal surgical procedures at the office of NJ Spine and Rehabilitation including, but not limited to, anterior cervical corpectomy, anterior cervical discectomy and fusion, artificial cervical disc replacement, cervical laminoplasty, cervical foraminotomy, microendoscopic posterior cervical discectomy, cervical laminectomy, anterior lumbar interbody fusion, laminectomy, lumbar corpectomy, lumbar disc microsurgery, lumbar "discoscopic" discectomy, lumbar interbody fusion, posterior lumbar interbody fusion, transforaminal lumbar interbody fusion, total disc replacement, lateral lumbar interbody fusion, and dekompressor discectomy. (Exhibit I).

24. Respondent Kaul performs between two to four minimally invasive spinal surgical procedures per month. (Exhibit C, 87:18-24).

25. Respondent Kaul's flagrant disregard of his own lack of

training and expertise and his continuing performance of surgical spinal procedures for which he is not qualified places the public in clear and imminent danger. (Exhibit D; Exhibit E).

26. Respondent Kaul's above-stated conduct constitutes gross negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(c), and/or constitutes repeated acts of negligence, malpractice or incompetence, in violation of N.J.S.A. 45:1-21(d).

27. The aforesaid conduct by Respondent constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e) and failure to maintain good moral character as a continuing condition of licensure in violation of N.J.S.A. 45:9-6.

28. The aforesaid conduct by Respondent Kaul demonstrates that his continued practice presents a clear and imminent danger to the public health, safety, and welfare pursuant to N.J.S.A. 45:1-22.

COUNT II

29. Complainant repeats the General Allegations and the allegations of all prior counts as if fully set forth herein and incorporated by reference.

30. In March 2011, New Jersey Spine and Rehabilitation Center ("NJSR") became a one-room surgical office subject to the requirements of N.J.A.C. 13:35-4A.1 et seq. (Exhibit B).

31. As recited in Count I, Respondent Kaul performs spinal surgical procedures at NJSR which require patients to receive

general anesthesia. (Exhibit B).

32. Respondent Kaul performs interventional pain management procedures including, but not limited to, transforaminal epidural injections at L3-L4, L4-L5 and L5-S1 at NJSR. Patients receiving these interventional pain management procedures receive either conscious sedation, regional anesthesia or general anesthesia. (Exhibit B).

33. During these procedures, Dong Kwak, M.D., an non-board certified anesthesiologist with hospital privileges at Hoboken University Medical Center provides anesthesia to patients. (Exhibit B, EB0001-0023).

34. Pursuant to N.J.A.C. 13:35-4A.3, "surgery" includes all procedures performed utilizing either conscious sedation, regional anesthesia or general anesthesia.

35. Pursuant to N.J.A.C. 13:35-4A.6, a physician who performs surgery in a one-room surgical office must either have hospital privileges to perform that surgery or shall apply to the Board to seek Board-approved privileging to perform that surgery.

36. At all times pertinent to this complaint, Respondent Kaul does not have any hospital privileges, including those specific to either spinal surgical procedures or interventional pain management procedures. (Exhibit B; Exhibit C, 12:15-17).

37. At all times pertinent to this complaint, Respondent Kaul does not have alternative privileges granted by the Board pursuant

to N.J.A.C. 13:35-4A.12 in either spinal surgical procedures or interventional pain management procedures. (Certification of William V. Roeder, Executive Director of the Board, annexed hereto as Exhibit L).

38. Dr. Kaul's performance of spinal surgical procedures, including major open spinal surgery, at NJSR when he is without hospital privileges or alternative privileges in New Jersey places the public in a clear and imminent danger. (Exhibit D).

39. Respondent Kaul's failure to have the appropriate hospital privileges or Board-approved alternative privileges in spinal surgery and/or interventional pain management is a violation of N.J.A.C. 13:35-4A.6 and is thus deemed to be professional misconduct under N.J.S.A. 45:1-21(e) and a violation of a Board-regulation under N.J.S.A. 45:1-21(h).

40. The aforesaid conduct by Respondent Kaul demonstrates that his continued practice presents a clear and imminent danger to the public health, safety, and welfare pursuant to N.J.S.A. 45:1-22.

COUNT III

41. Complainant repeats the General Allegations and the allegations of all prior counts as if fully set forth herein and incorporated by reference.

42. Patient K.S., a 39 year old male, was initially evaluated by Respondent Kaul on August 23, 2010. His complaints emanated

from a accident on June 30, 2010 which caused injury to his cervical and lumbar spine. (Exhibit B, EB00184-EB0187).

43. On December 3, 2011, Respondent Kaul performed a cervical discography which revealed concordant pain and disruption over the C3-C4, C4-C5 and C5-C6 levels. (Exhibit B, EB00184-EB0187).

44. On December 19, 2011, Respondent Kaul performed an open anterior cervical discectomy and fusion with PEEK cages and GPS autograft. Respondent Kaul performed a decompression at both the C4-C5 and C5-C6 and then prepared the end-plates. An interbody cage was then inserted into the intervertebral space and a securing plate and spike were then advanced through the interbody cage into the end-plate at both levels. Iliac autograft was also harvested with iliac reconstruction using Vitoss. (Exhibit B, EB00184-EB0187)

45. This surgery started at 10:25 and ended at 14:11, for a total of three hours and forty-six minutes. (Exhibit B, EB0178).

46. The anesthesia provided to Patient K.S. by Dr. Kwak was General Anesthesia with Endotracheal Intubation. (Exhibit B, EB00184).

47. The neurological examination performed and documented by Respondent Kaul on Patient K.S. prior to the surgery is deficient for a number of reasons including, but not limited to, its failure to include the relevant features of the examination pertinent to the procedure intended to be performed. (Exhibit D).

48. The performance of this spinal surgery deviates from the standard of care for a number of reasons including, but not limited to, Respondent Kaul lacks the adequate training and experience of a spine surgeon and the required privileging to perform these procedures. (Exhibit D, Exhibit E).

49. Respondent Kaul's above-stated conduct constitutes gross negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(c), and/or constitutes repeated acts of negligence, malpractice or incompetence, in violation of N.J.S.A. 45:1-21(d).

50. Alternatively and additionally, Respondent Kaul fails to maintain a proper patient record, contrary to N.J.A.C. 13:35-6.5.

51. The aforesaid conduct by Respondent Kaul demonstrates that his continued practice presents a clear and imminent danger to the public health, safety, and welfare pursuant to N.J.S.A. 45:1-22.

COUNT IV

52. Complainant repeats the General Allegations and the allegations of all prior counts as if fully set forth herein and incorporated by reference.

53. On November 14, 2011, Patient G.H., a 54 year old man, was initially evaluated by Respondent Kaul. His complaints of worsening pain in the lower back and both legs spanned over a five-year period. (Exhibit B, EB0077).

54. Patient G.H. had a prior L5-S1 laminectomy. (Exhibit B,

EB0077).

55. On December 3, 2011, a lumbar discography revealed concordance and disruption in the discs at L3-L4 and L4-L5. The L5-S1 level was not able to be accessed due to the high iliac crest. (Exhibit B, EB0077).

56. On December 9, 2011, Respondent Kaul performed a three level lumbar decompression and fusion on G.H. A lateral extraperitoneal exposure allowed placement of a PEEK interbody cage at L3-L4. Patient G.H. also underwent an iliac crest bone harvest with iliac reconstruction performed using Vitoss. Respondent Kaul also performed lumbar interbody fusions at L4-L5 and L5-S1 with placement of mesh filled with allograft bone. Because a posterior lateral approach was not possible at L5-S1, Respondent Kaul approached the disc space using a posterior interlaminar approach. Pedicles were cannulated and screws were placed bilaterally at the L3, L4, L5 and S1 levels with rods. (Exhibit B, EB0077-0078).

57. This surgery started at 8:45 and ended at 15:14, for a total of six hours and twenty-nine minutes. (Exhibit B, EB0072).

58. The anesthesia provided to Patient G.H. by Dr. Kwak was General Anesthesia with Endotracheal Intubation. (Exhibit B, EB0075).

59. The neurological examination performed and documented by Respondent Kaul on Patient G.H. prior to the surgery is deficient for a number of reasons including, but not limited to, its failure

to include the relevant features of the examination pertinent to the procedure intended to be performed. (Exhibit D).

60. The performance of this spinal surgery deviates from the standard of care for a number of reasons including, but not limited to, Respondent Kaul lacks the adequate training and experience of a spine surgeon and the required privileging to perform these procedures. (Exhibit D, Exhibit E).

61. Respondent Kaul's above-stated conduct constitutes gross negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(c), and/or constitutes repeated acts of negligence, malpractice or incompetence, in violation of N.J.S.A. 45:1-21(d).

62. Alternatively and additionally, Respondent Kaul fails to maintain a proper patient record, contrary to N.J.A.C. 13:35-6.5.

63. The aforesaid conduct by Respondent Kaul demonstrates that his continued practice presents a clear and imminent danger to the public health, safety, and welfare pursuant to N.J.S.A. 45:1-22.

COUNT V

64. Complainant repeats the General Allegations and the allegations of all prior counts as if fully set forth herein and incorporated by reference.

65. Patient S.S., a 56 year old male, had a lumbar interbody fusion at L5-S1 on April 17, 2009. He complained of chronic low back pain. (Exhibit B, EB0251-0254).

66. The preoperative diagnosis for the December 9, 2011 procedure was L5-S1 pseudoarthrosis. (Exhibit B, EB0251-0254).

67. On December 9, 2011, Respondent Kaul made an approximate three inch mid-line incision with dissection down to the lumbar dorsal fascia to remove the hardware at L5-S1. He then performed an open lumbar interbody fusion through a translaminar approach at L5-S1. Specifically, Respondent Kaul dissected down to the laminar facet junction where the soft tissue and bony tissue were dissected using, among other tools, a drill. Once access to the intervertebral space at the L5-S1 level was obtained, the remnants of the disc space and the previously placed allograft bone were removed. Having decompressed and prepared the end-plates the interbody cage was inserted into the intervertebral space and packed with allograft bone at the L5-S1 level. Next, the pedicles were cannulated and placement of the screws bilaterally in the L5 and S1 pedicles. Rods were then placed in the screws. Iliac autograft was also harvested with iliac reconstruction using Vitoss. (Exhibit B, EB0251-0254).

68. This surgery started at 16:26 and ended at 19:15, for a total of two hours and forty-nine minutes. (Exhibit B, EB0242-0248).

69. The anesthesia provided to Patient S.S. by Dr. Kwak was General Anesthesia with Endotracheal Intubation. (Exhibit B, EB00251).

70. The neurological examination performed and documented by Respondent Kaul on Patient S.S. prior to the surgery is deficient for a number of reasons including, but not limited to, its failure to include the relevant features of the examination pertinent to the procedure intended to be performed. (Exhibit D).

71. The performance of this spinal surgery deviates from the standard of care for a number of reasons including, but not limited to, Respondent Kaul lacks the adequate training and experience of a spine surgeon and the required privileging to perform these procedures. (Exhibit D, Exhibit E).

72. Respondent Kaul's above-stated conduct constitutes gross negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(c), and/or constitutes repeated acts of negligence, malpractice or incompetence, in violation of N.J.S.A. 45:1-21(d).

73. Alternatively and additionally, Respondent Kaul fails to maintain a proper patient record, contrary to N.J.A.C. 13:35-6.5.

74. The aforesaid conduct by Respondent Kaul demonstrates that his continued practice presents a clear and imminent danger to the public health, safety, and welfare pursuant to N.J.S.A. 45:1-22.

COUNT VI

75. Complainant repeats the General Allegations and the allegations of all prior counts as if fully set forth herein and incorporated by reference.

76. In 1997, Patient F.K. underwent a lumbar laminectomy and discectomy at L4-L5. (Exhibit K, 0489-0491; 0002).

77. On April 7, 2006, a lumbar discography revealed concordant pain at L4-L5. (Exhibit K, 0008).

78. On January 27, 2007, a lumbar discography from L2-L3 to L5-S1 revealed concordant pain at L4-L5.(Exhibit K, 0845-0846).

79. On February 12, 2007, underwent a revision L3-L5 laminectomy and bilateral posterior spinal fusion with instrumentation at L3-L4 and L4-L5 by Dr. Emami. (Exhibit K, 0499-0503).

80. On January 25, 2008, a lumbar MRI revealed a L3-L4 laminectomy and facet arthrosis of L2-L3 to L5-S1. (Exhibit K, 0509-0510; 0009-0010).

81. On April 4, 2008, Patient F.K., a 48 year old woman, was initially evaluated by Respondent Kaul. Her complaints emanated from a 2006 auto accident and included head, neck, left arm, low back and bilateral leg pain with episodes of weakness, numbness, tingling, and difficulty walking. (Exhibit K, 0489-0491; 0002-0003).

82. The initial examination by Respondent Kaul revealed weakness over the left hip flexor and right dorsiflexion weakness with left L4 and right L5 dermatomal deficits but intact reflexes. Respondent Kaul recommended a lumbar discography from L2-L3 to L5-S1. His differential diagnosis included "rule out pseudoarthrosis".

(Exhibit K, 0489-0491; 0002-0003).

83. This initial examination was deficient because of, but not limited to, his failure to document history sufficient to determine the site(s) of pain in order to facilitate an appropriate diagnosis. (Exhibit D).

84. During this initial examination, Respondent Kaul failed to document that Patient F.K. smoked one pack of cigarettes per day. (Exhibit D).

85. On April 19, 2008, Respondent Kaul performed a lumbar discography which revealed concordant pain at L2-L3 and L3-L4. (Exhibit K, 0424-0425; 0011-0013).

86. A lumbar CT report dated April 19, 2008 revealed bilateral L3-L4 and L4-L5 fixation rods and screws with evidence of bone graft material and L3-L4 decompression. (Exhibit K, 0500; 0014-0016).

87. On July 28, 2008, Respondent Kaul performed removal of L3, L4 and L5 hardware, placed L2, L3 and L4 pedicle screws on the right, placed L3, L4, and L5 pedicle screws on the left, and performed a posterior lumbar interbody fusion at L2-L3, L3-L4 and L4-L5 using mesh and allograft bone. (Exhibit K, 0419-0422; 0021-0025).

88. This surgery started at 13:45 and ended at 20:45, for a total of 7 hours. (Exhibit K, 0603).

89. The anesthesia provided to Patient F.K. was General

Anesthesia with Endotracheal Intubation. (Exhibit K, 0419,0021).

90. The performance of this spinal surgery deviated from the standard of care for a number of reasons including, but not limited to, placement of pedicle screws asymmetrically at the L2 on the right and L5 on the left caused each end vertebrae to only have a single screw fixation. This placement of single screws at the L2 and L5 levels is inadequate to resist rotational or translational movement in comparison to paired fixation, which increases the risk of pseudoarthrosis or fixation failure. (Exhibit D).

91. There is no documented radiological evidence present in the record to determine whether a pseudoarthrosis was present. (Exhibit K, 0489-0491; Exhibit D).

92. The performance of this spinal surgery deviated from the standard of care because, but not limited to, the absence of a proven pseudoarthrosis makes the medical necessity of performing a three level lumbar fusion unjustified. (Exhibit D).

93. The performance of this spinal surgery deviated from the standard of care because, but not limited to, Respondent Kaul never addressed the disparity of findings of concordant pain in the discographies. (Exhibit D).

94. The Consent Form signed by both Respondent Kaul and Patient F.K. described performance of lumbar interbody fusion at L2-L3 and L3-L4 with posterior instrumentation. The L4-L5 was written in different ink and only initialed by Respondent Kaul.

(Exhibit K, 0483-0485).

95. Respondent Kaul failed to inform Patient F.K. of the significant risk of smoking and the occurrence of pseudoarthrosis after a lumbar fusion particularly with the use of only allograft bone. (Exhibit D).

96. The use of allograft bone rather than autograft bone when treating a patient who smokes cigarettes is a deviation from the accepted standard of care. (Exhibit D).

97. Respondent Kaul incorrectly billed anterior lumbar interbody fusion codes, non-segmental instrumentation insertion codes, and inappropriately unbundled fluoroscopy and injection codes. (Exhibit D).

98. Although the spinal surgery took place on July 28, 2008, Respondent Kaul did not dictate his operative report until September 2, 2008. (Exhibit K, 0422; 0024).

99. The performance of this spinal surgery deviated from the standard of care because of, but not limited to, Respondent Kaul's lack of adequate training and experience as a spine surgeon.

100. Respondent Kaul's above-stated conduct constitutes gross negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(c), and/or constitutes repeated acts of negligence, malpractice or incompetence, in violation of N.J.S.A. 45:1-21(d).

101. Alternatively and additionally, Respondent Kaul fails to maintain a proper patient record, contrary to N.J.A.C. 13:35-6.5.

102. Respondent Kaul incorrectly and fraudulently bills for his services. Respondent's course of conduct as alleged herein constitutes dishonesty, fraud, deception or misrepresentation and is thus the basis for disciplinary sanction pursuant to N.J.S.A. 45:1-21(b).

103. The aforesaid conduct by Respondent constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e) and failure to maintain good moral character as a continuing condition of licensure in violation of N.J.S.A. 45:9-6.

104. The aforesaid conduct by Respondent Kaul demonstrates that his continued practice presents a clear and imminent danger to the public health, safety, and welfare pursuant to N.J.S.A. 45:1-22.

COUNT VII

105. Complainant repeats the General Allegations and the allegations of all prior counts as if fully set forth herein and incorporated by reference.

106. Patient P.M. had a prior history of a L4-L5 laminectomy. (Exhibit J, M-0418).

107. On December 14, 2005, a lumbar MRI revealed a right L4-L5 laminectomy defect, broad disc bulge at L2-L3, and spondylosis at L2-L3 and L4-L5. (Exhibit J, M-0002- M-0003).

108. On January 21, 2006, a lumbar discography revealed concordant pain at L2-L3 and L4-L5. (Exhibit J, M-0098- M-0100).

109. On February 25, 2006, Patient P.M. had a percutaneous discectomy at L2-L3 and L4-L5. (Exhibit J, M-0127- M-0129).

110. On March 10, 2007, a lumbar discography revealed concordant pain at L2-L3 and L4-L5. (Exhibit J, M-0289- M-0291).

111. On March 24, 2007, Patient P.M. had a percutaneous discectomy at L3-L4 and L4-L5. (Exhibit J, M-0321- M-0324).

112. On November 8, 2007, Patient P.M., a 44 year old woman, was initially evaluated by Respondent Kaul. Her complaints emanated from a 2005 auto accident and included lower back and leg pain with numbness, tingling and weakness in the hip and ankle joint. (Exhibit J, M-0417- M-0418).

113. The initial examination by Respondent Kaul on November, 8, 2007 revealed 4/5 left hip flexors and dorsiflexors, deficits over left L5 dermatome, and 2+ patellar, 1+ left and 2+ right Achilles reflexes. (Exhibit J, M-0418).

114. This initial examination was deficient because of, but not limited to, Respondent Kaul's failure to document history sufficient to determine the site(s) of pain in order to facilitate an appropriate diagnosis. (Exhibit D).

115. On August 23, 2008, a lumbar discography revealed concordant pain at L2-L3 and L4-L5. (Exhibit J, M-0357).

116. On November 21, 2008, Respondent Kaul performed a lumbar interbody fusion with mesh cage and allograft bone at L2-L3, L3-L4, and L4-L5 with bilateral transfacet pedicular screws at L3, L4 and

L5 with fluoroscopy using a bilateral posterolateral approach. (Exhibit J, M-0421- M-0425).

117. In the November 21, 2008 operative report Respondent Kaul describes the pedicle screw fixation technique as insertion "through the facet into the pedicle". There was no description of rod placement and/or interconnection of the screws. (Exhibit J, M-0424).

118. This surgery started at 12:20 and ended at 16:40, for a total of 4 hours and 20 minutes. (Exhibit J, M-0373).

119. The anesthesia provided to Patient P.M. was General Anesthesia with Endotracheal Intubation. (Exhibit J, M-0421).

120. The performance of this spinal surgery deviated from the standard of care because, but not limited to, there is no evidence of transfacet screw fixation across the joints themselves. Failure to interconnect the screws on each side renders them unable to resist translational and rotational movements. (Exhibit D).

121. The performance of this spinal surgery deviated from the standard of care because, but not limited to, the absence of a documented deformity makes the medical necessity of performing a three level lumbar fusion unjustified. (Exhibit D).

122. The performance of this spinal surgery deviated from the standard of care because of, but not limited to, the disparity of discogram findings and the procedure performed. (Exhibit D).

123. Respondent Kaul failed to inform Patient P.M. of the

significant risk of smoking and the occurrence of pseudoarthrosis after a lumbar fusion particularly with the use of only allograft bone. (Exhibit J, M-0422-0423).

124. The use of allograft bone rather than autograft bone when treating a patient who smokes cigarettes is a deviation from the appropriate standard of care. (Exhibit D).

125. The performance of this spinal surgery deviated from the standard of care because of, but not limited to, Respondent Kaul's lack of adequate training and experience as a spine surgeon. (Exhibit D; Exhibit E).

126. Respondent Kaul's above-stated conduct constitutes gross negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(c), and/or constitutes repeated acts of negligence, malpractice or incompetence, in violation of N.J.S.A. 45:1-21(d).

127. Alternatively and additionally, Respondent Kaul fails to maintain a proper patient record, contrary to N.J.A.C. 13:35-6.5.

128. The aforesaid conduct by Respondent Kaul demonstrates that his continued practice presents a clear and imminent danger to the public health, safety, and welfare pursuant to N.J.S.A. 45:1-22.

COUNT VIII

129. Complainant repeats the General Allegations and the allegations of all prior counts as if fully set forth herein and incorporated by reference.

130. The website for NJSR contains numerous misleading statements regarding Respondent Kaul's education, training, and credentials to perform spinal surgical procedures including, but not limited to the following:

a. Respondent Kaul is a "board-certified minimally-invasive spine specialist". (Exhibit I, website 0008).

b. Respondent Kaul is a "pioneer in minimally-invasive and percutaneous spinal surgery". (Exhibit I, website 0005).

c. Respondent Kaul passed the oral and written qualifying examinations to be a fellow of the American Board of Interventional Pain Management. The website for the American Board of Interventional Pain Management does not list Respondent Kaul as either a diplomate or a fellow. (Exhibit I, website 0009).

d. Respondent Kaul is a member of the American Academy of Minimally-Invasive Spinal Medicine and Surgery. The website for the American Academy of Minimally-Invasive Spinal Medicine and Surgery does not list Respondent Kaul as either a member or one of its board-certified specialists in New Jersey. (Exhibit I, website 0009).

131. These misleading statements impair a patient's ability to provide informed consent for a spinal surgery procedure performed by Respondent Kaul. (Exhibit D).

132. The conduct as alleged herein constitutes dishonesty, fraud, deception or misrepresentation and is thus the basis for disciplinary sanction pursuant to N.J.S.A. 45:1-21(b).

133. The above-stated conduct constitutes repeated acts of professional misconduct, in violation of N.J.S.A. 45:1-21(e).

WHEREFORE, Complainant demands the entry of an Order:

1. Finding that each of the acts, practices and/or admissions of Respondent Kaul constitutes multiple and separate instances of unlawful dangerous conduct, representing a clear and imminent danger to the public;

2. Imposing the temporary suspension or other limitation on the license of Respondent Kaul on an emergent basis premised upon the Verified Allegations of Count I-VII and pending conclusion of a plenary hearing in this matter, pursuant to N.J.S.A. 45:1-22;

3. Suspending or revoking the license heretofore issued to Respondent Kaul to practice medicine and surgery in the State of New Jersey;

4. Imposing the maximum statutory civil penalties for each separate unlawful act as set forth above;

5. Imposing costs, including investigative costs, attorney's fees, fees for expert and fact witness expenses, and costs of hearing including transcripts;

6. Reimbursing patients/examinees and/or third party payors of all monies received for acts found to be unlawful in the circumstances alleged herein;

7. Prohibiting Respondent Kaul from profiting from any medical practice alleged herein; and

8. Directing such other and further action or relief as may be deemed necessary and appropriate by the Board to protect the

public's health, safety and welfare.

JEFFREY S. CHIESA
ATTORNEY GENERAL OF NEW JERSEY

By: D- Hafner
Doreen A. Hafner
Deputy Attorney General

Dated: 4/2/12